Local Union No. 89, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO *and* LeFebure Corporation, Division of Walter Kidde & Company, Inc. Case 18–CD–183

September 24, 1975

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS FANNING, JENKINS, AND PENELLO

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed on May 20, 1975, by LeFebure Corporation, Division of Walter Kidde & Company, Inc. (herein the Employer), alleging that Local Union No. 89, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO (herein Local 89), violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the assignment of certain work to employees represented by it rather than to the Employer's own unrepresented employees.

A hearing was held before Hearing Officer Michael A. Hansell on June 18 and 24, 1975, at Cedar Rapids, Iowa.

All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. All parties filed briefs which have been duly considered.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings made by the Hearing Officer at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.[1]

Upon the entire record in this case, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The record shows that the Employer, a Delaware corporation, is engaged at its factory in Cedar Rapids, Iowa, in the manufacture and nonretail sale and distribution of bank equipment. It maintains 27 locations throughout the United States, including a branch facility located at 633 58th Avenue Court SW. in Cedar Rapids. During the last year the Employer has sold and shipped products valued in excess of $50,000 from its Cedar Rapids facility to customers located outside the State of Iowa. Accordingly, we find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated and we find that Local 89 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *The Work in Dispute*

The disputed work involves the unloading, loading, repair, and maintenance of the Employer's products performed through its Cedar Rapids branch office.[2]

B. *Background and Facts of the Dispute*

The Employer manufactures a general line of equipment for financial institutions, principally alarm and surveillance systems, cameras, television units, drive-in facilities, vault doors and accessories, etc. The distribution, installation, repair, and maintenance of the Employer's products is accomplished through 27 branches throughout the country, including a branch in Cedar Rapids which is located apart from the manufacturing facility.

Prior to 1969 when the branch office system was inaugurated, all product installation, loading and unloading, servicing, and maintenance were performed by employees working directly out of the Cedar Rapids manufacturing facility. Since that time, however, the work has been performed by the Employer's branch service technicians.

There have been, however, some instances in which the installation of the Employer's products has been performed by ironworkers located in various cities. In each instance, however, the Employer's service technicians have supervised the work of the ironworkers. The Employer asserts that it has never desired to have ironworkers perform the work and that in these isolated instances it has acceded to Iron

[1] During the course of the hearing, Local 89 moved to dismiss the charges on grounds the disputed work was not being claimed by another labor organization. The Hearing Officer referred the motion to the Board for a ruling. The motion is hereby denied for reasons indicated *infra*.

[2] Although Local 89 contended that the description of the disputed work should be expanded to include installation and dismantling, testimony established that since about February 1975 all installation and dismantling work performed in Local 89's geographic jurisdiction has been subcontracted to another employer who is signatory to a collective-bargaining agreement with Local 89.

Workers demands in order to avoid disruptive labor disputes.

Because it deemed the *ad hoc* assignment of some disputed work to ironworkers unsatisfactory, in August 1974, the Employer's vice president, Wehmeyer, met with Phillip Kraft, Local 89's business agent, in an attempt to explore the possibility of working out a more beneficial arrangement. When these efforts were unsuccessful, the Employer, in March or April 1975, subcontracted all its vault installation work to another local contractor who employs members of Local 89. On each job, however, the loading, unloading, repair, and maintenance of the Employer's products continues to be performed by the Employer's service technicians with the only exception being the unloading of LeFebure products at a jobsite where ironworkers are present on the job.

In August 1974, Paul Schwiebert, a service technician employed by the Employer's Cedar Rapids branch, became a member of Local 89 and demanded that he be paid the Iron Workers scale of $9.10 per hour. At that time the Employer's wage scale was between $4.25 and $5.50 per hour. Schwiebert was informed that as long as he remained a LeFebure employee he would be paid at the Employer's wage rate. Schwiebert voluntarily terminated his employment with the Employer, but since that time has worked on the Employer's installation products when they were processed through Local 89.

In March 1975, Ronald Pratt, another service technician, informed the Employer that he had joined Local 89 (and demanded union scale). He continued working as a LeFebure service technician, however, until April 10, 1975, when he also discontinued working for the Employer.

On the morning of May 9, 1975, Schwiebert and Pratt began to picket the Employer. First they appeared at the Cedar Rapids branch office for about an hour and a half. Then they left and went to the manufacturing facility. At each location, the signs they carried stated:

> LeFebure work on this job being done under wages and working conditions which jeopardize those established in this area by Iron Workers Local 89.

On the reverse side of the signs, in letters about 1 inch in height, was carried the message:

> By this picket no one is being asked to stop work or join a union or not to cross a picket.

After the commencement of the picketing, no pickups or deliveries were made by common carriers servicing the facility. In addition, employees of other crafts refused to service or maintain defective equipment on the facility. Thus, the instant charges were filed.

C. *The Contentions of the Parties*

Local 89 contends that no jurisdictional dispute exists which is cognizable under the Act since no other labor organization has claimed the work in dispute. It argues that, even if there is a viable labor dispute, the employees it represents are entitled to an assignment of the work on the basis of the various factors which are relevant in 10(k) proceedings.

The Employer, on the other hand, argues that, despite the absence of another labor organization claiming the work in dispute, there nevertheless exist a viable labor dispute since its unrepresented employees, as an identifiable group, claim the disputed work. Proceeding from the premise of the existence of a viable 10(k) dispute, the Employer contends the work in question, on the basis of factors relevant in 10(k) proceedings, should be awarded to its unrepresented employees.

D. *The Applicability of the Statute*

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not adjusted or agreed upon methods for the voluntary adjustment of the dispute.

We find no merit in Local 89's assertion that the notice of hearing should be quashed because no other rival labor organization claims the work in dispute. The record reveals that the unrepresented employees of the Employer were performing the work in dispute at the time the dispute arose. They continued to perform the work despite Local 89's picket line. These unrepresented employees constitute an identifiable group of the employee complement and manifest their claim to the work by their performance thereof. In our view, such circumstances constitute sufficient evidence to indicate that the Employer's service technicians claim the disputed work.

Further, the evidence shows that members of Local 89 were authorized to picket on behalf of that Union. Inasmuch as the record in this case shows that an object of the picketing was to have the Employer assign the disputed work to members of Local 89, we find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the dispute is properly before the Board for determination under Section 10(k) of the Act.[3]

[3] The parties stipulated that there is no voluntary method for adjustment of the dispute

E. *Merits of the Dispute*

Section 10(k) of the Act requires that the Board make an affirmative award of disputed work after giving due consideration to various factors. As the Board has stated, the determination in a jurisdictional dispute case is an act of judgment based on commonsense and experience in weighing these factors.[4] The following factors are relevant in making a determination of this dispute.

1. Past practice

The Employer contends that, since establishing its branch office system in 1969, it has followed a practice at each branch, including the one in Cedar Rapids, of assigning the disputed work to its service technicians. It concedes, however, that there have been some exceptions to the exclusive performance of the disputed work by service technicians. Specifically, ironworkers have been permitted to unload products at certain installation sites and they have been permitted to make certain repairs where a product has been damaged in shipment or installation. The Employer emphasizes, however, that the foregoing instances were the rare exception and dictated by practical considerations and the desire to avoid a conflict.

On the basis of the foregoing, we are persuaded that past practice favors an award to the employees of the Employer.

2. Area and industry practice

Evidence of area and industry practice is mixed and does not favor either group over the other.

3. Skills involved and efficiency and economy of operation

The record shows that the Employer's service technicians are recruited, tested, and trained to perform the disputed work and are well qualified to perform it. In order to properly install, service, and maintain the Employer's products, the service technicians must be provided with a set of manuals which are regularly supplemented and which, according to the Employer, cannot be distributed to members of Local 89. In this regard, the Employer contends that, inasmuch as its operations involve the installation and service of security systems and devices, to permit its manuals and literature (which describe the working of alarms, etc.) to persons beyond its control would violate the security of the banks the employer serves.

The Employer has service technicians who are generally assigned to specific geographic areas and who are equipped with company tools and vehicles and who are readily available to perform when required. An ironworker must be obtained through the union business agent and one may or may not be immediately available when called. The Employer contends that, if an ironworker does not have the tools necessary to perform the job, it is necessary to send a service technician to the job, thus duplicating time, effort, and expense. In short, the Employer has been satisfied with the work performance of its technicians and the efficiency of their operations and prefers that they continue to perform the disputed work. In our view, the foregoing factors favor an award consistent with the Employer's assignment.

Conclusion

Upon the record as a whole and after full consideration of all relevant factors, particularly the Employer's past practice, the skill of the employees, the Employer's preference, and the efficiency of operations, we conclude that the unrepresented employees of the employer are entitled to perform the work in question and shall determine the dispute in their favor. Our present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute:

1. The unrepresented employees of LeFebure Corporation, Division of Walter Kidde & Company, Inc., are entitled to perform the unloading, loading, repair, and maintenance of the Employer's products performed through the Employer's Cedar Rapids branch office.

2. Local Union No. 89, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, is not entitled, by means proscribed by Section 8(b)(4)(D) of the Act, to force or require the Employer to assign the above-described work to employees who are represented by Local 89.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local Union No. 89, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, shall notify

[4] *N.L.R.B.* v. *Radio and Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL–CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

the Regional Director for Region 18, in writing, whether or not it will refrain from forcing or requiring the Employer, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work to the employees it represents, rather than to the Employer's unrepresented employees.